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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,159	05/06/2004	Torsten Gogolla	DT-6801	7390

30377 7590 02/21/2007  
DAVID TOREN, ESQ.  
ABELMAN FRAYNE & SCHWAB  
666 THIRD AVENUE  
NEW YORK, NY 10017-5621

EXAMINER
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ALSOMIRI, ISAM A

ART UNIT	PAPER NUMBER
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3662

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/21/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/840,159	GOGOLLA ET AL	
	Examiner	Art Unit	
	Isam Alsomiri	3662	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>062906</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 11, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-10 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Greller et al EP0828165A2.** Referring to claims 1 and 16, Greller disclose in figure 1 an electro-optical hand-held distance measuring instrument with a housing that can be held in the hand and with an electro-optical distance measurement module with an electric beam source (1) for generating an optical measurement beam (2), a beam receiver (1) for receiving portions of the measurement beam (3) that are backscattered by an object to be measured, and an output device (10) for the determined distance, wherein a mechanical distance measuring device (34, 41) is connected to the housing.

Referring to claim 2, Greller teaches a connection element (41) is provided that forms a manually detachable interface to the mechanical distance measuring device (34, 33).

Referring to claim 3, Greller teaches an externally accessible operator control (11-18) for activating the optical measurement beam (2) and triggering the optical distance measurement process.

Referring to claim 4, Greller teaches the electro-optical distance measurement module has a computing device (26) with additional calculation functions including the addition of distances.

Referring to claim 5, Greller teaches a common first reference point (31) for measuring the distance (X) with the mechanical distance measuring device (34,33) and with the optical measurement beam (2).

Referring to claim 6, a control device (11-18 or 26) that is connected with the mechanical distance measuring device (41,34) and that is connected to the electro-optical distance measurement module in a controllable manner (see figure 1).

Referring to claim 7, the control device is constructed as at least one contactless sensor that senses the position of the mechanical distance measuring device relative to the housing and that is sensitive to permanent magnet arranged in the mechanical distance measuring device.

Referring to claim 8, the end of the mechanical distance measuring device whose length is changeable with respect to the housing constitutes a second reference point

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(33) whose reference distance to the first reference point (31) can be detected by the computing device by the control device.

Referring to claim 9, the distance determined by the computing device is dependent on the reference distance (31 or 32).

Referring to claim 10, the control device is connected to a switching device for a current-carrying connection of the electro-optical distance measurement module to a power supply (inherent), wherein the switching device is closed to conduct current exclusively when the mechanical distance measuring device is in a position relative to the housing that is necessary for mechanical distance measurement.

Referring to claim 11, the mechanical distance measuring device is a measuring tape such as a self-stiffening, spring pretensioned steel measuring tape.

Referring to claim 12, The hand-held distance measuring instrument of claim 1, wherein the mechanical distance measuring device is a folding rule (11).

Referring to claim 13, The hand-held distance measuring instrument of claim 12, wherein the folding rule (11) has between 5 and 15 rotationally swivelable members (17) with a length (L) between 10 cm and 30 cm.

Referring to claim 14, the externally accessible operator control (11-18) is a press button.

Referring to claim 15, the additional calculation functions further include at least one of the subtraction of distances and the calculation of surfaces and volumes.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greller et al EP0828165A2. Greller is silent about the tape and the folding rule, which are very obvious alternative to the Greller device. It would have been obvious to replace the mechanical distance device of Greller with any other device (tape or folding rule) to a design choice or an alternative method to perform the same function.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isam Alsomiri whose telephone number is 571-272-6970. The examiner can normally be reached on Monday-Friday 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza can be reached on 571-272-6979. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

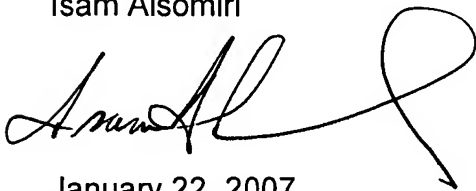
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Isam Alsomiri

A handwritten signature in black ink, appearing to read 'Isam Alsomiri', with a large, stylized loop at the end.

January 22, 2007